

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANTHONY CUMBERBATCH, TITU HASSAN,  
and JOHN MASON, on behalf on themselves  
and other employees similarly situated,

Plaintiffs,

-against-

EMSTAR PIZZA, INC., EMMANUEL  
ONUAGULUCHI, UCHENNA ONUAGULUCHI,  
and JOHN DOES 1-100 the actual names of such  
individuals or entities being unknown,

Defendants.  
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ORDER ADOPTING R&R  
13-cv-7170 (WFK) (RER)

FILED  
2014 NOV 11 PM 2:16  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**WILLIAM F. KUNTZ, II, United States District Judge:**

This action was filed on December 17, 2013 and originally assigned to the Hon. United States District Judge Frederic Block. Dkt. 1. When Defendants failed to move or otherwise answer, the Clerk of Court issued a certificate of Default. Dkt. 10. On July 7, 2014, Plaintiffs brought a motion for default judgment. Dkt. 11. Judge Block referred the motion to the Hon. United States Magistrate Judge Ramon E. Reyes, Jr. for a report and recommendation ("R&R") on liability and damages. Dkt. Entry 7/7/2014 (Electronic Order Referring). On July 21, 2014, Defendants Emmanuel and Uchenna Onuaguluchi filed a motion for extension of time to file an answer. Dkt. 18. The case was reassigned to this Court on July 28, 2014. Dkt. Entry 7/28/2014 (Order Reassigning Case). This Court also referred the motion for extension of time to file an answer to Judge Reyes for an R&R. Dkt. 27.

Judge Reyes held a Traverse Hearing/oral argument on both referred motions on September 12, 2014. Dkt. Entry 9/12/2014. On October 16, 2014, Judge Reyes issued an R&R

finding that service was deficient and “respectfully recommend[ing] Plaintiffs be directed to re-serve the Individual Defendants in accordance with N.Y. C.P.L.R. § 312-a, mailing the summons and complaint via first class mail to [Emmanuel] Onuaguluchi at 115-44 205<sup>th</sup> Street St. Albans, New York, and [Uchenna] Onuaguluchi at 244-19 136th Avenue, Rosedale, New York, with two copies of a statement of service by mail and acknowledgment of receipt in the form set forth in N.Y. C.P.L.R. § 312-a(d), as well as a return envelope, postage prepaid, addressed to the sender. Defendants should then complete the acknowledgment of receipt and mail or deliver one copy of same within thirty days from the date of receipt, and then serve their answers within twenty days after the date the signed acknowledgments of receipt are mailed or delivered to the sender.” Dkt. 47 (R&R) at 5–6. Accordingly, Judge Reyes concluded that “the Individual Defendants’ motion to vacate entry of default [should] be granted and Plaintiffs’ motion for a default judgment [should] be denied as to the Individual Defendants.” *Id.* at 6. Objections to the R&R were to be filed with this Court by November 3, 2014. *Id.*; Fed. R. Civ. P. 72(b)(2). No objections have been filed and the time to do so has passed.

The Court reviews an R&R for clear error when no objections have been filed. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007) (Garaufis, J.). The Court finds no such error here.

The Court therefore ADOPTS the R&R of Judge Reyes, Dkt. 47, in its entirety.

**CONCLUSION**

Accordingly, it is hereby ordered that the Individual Defendants' motion to vacate entry of default, Dkt. 18, is GRANTED and Plaintiffs' motion for a default judgment, Dkt. 11, is DENIED as to the Individual Defendants. Plaintiffs are directed to proceed with service of process consistent with Judge Reyes's opinion.

**SO ORDERED.**

s/WFK

  
HON. WILLIAM F. KUNTZ, II  
UNITED STATES DISTRICT JUDGE

Dated: November 4, 2014  
Brooklyn, New York